

The September 24, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman Matthew Zuker called the meeting to order at 7:01 p.m. with the following members present:

Matthew Zuker, Chairman
James DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member (not present)
Susanne Murphy, Member
Timothy Foley, Associate Member

Also present:
Stephanie Mercandetti, Community & Economic Development Director

7:00 p.m. – Walsh Brothers Building Company – Case #11-14

Mr. Zuker read the public hearing notice for **Walsh Brothers Building Company – Case #11-14**, with respect to property involving undeveloped land off Eldor Drive (Lot 10), Walpole, MA and shown on the Assessors Map as Lot No. 56-119 86R Winter Street, Residence A Zone.

The application is for:

A Variance from Section 6-B.1 of the Zoning Bylaws which requires frontage of 150 feet along the street line with 87.33 feet being provided.

A Variance from Section 6-B.1 of the Zoning Bylaws which requires a circle, the diameter of which is not less than 80% (120 ft.) of the minimum required lot frontage, tangent to the exterior street line from which the required frontage and minimum setbacks are derived.

A Variance from Section 6-C.3.A of the Zoning Bylaws which requires a variance from lot frontage along the street line and also between said side lot lines along a line which marks the required building setback. The longer of said distances shall be considered frontage however, the shorter of such measurements shall be not less than 80% of the required frontage. The proposed frontage along the street line is 87.33 feet and the shorter at the setback line is 46 feet.

Mr. Zuker mentioned that the Board is here tonight to deliberate on a decision for this case. The Board will not be taking in any new information.

Ms. Murphy mentioned that she would rather see what the applicant is proposing as opposed to the subdivision that could possibly happen.

Mr. DeCelle stated the issue he has is he feels the applicant created their own hardship.

Mr. Hiltz said that there are wetlands between the two properties. He felt that the hardship might not have been created by the construction of the Winter Street subdivision.

Mr. Zuker felt that it would be strange to create that property (Lot 10) in the first place and that it is oddly shaped.

Mr. DeCelle mentioned that all of the land (Winter Street Estates and Lot 10) was owned by the same person. The land was all one large piece. The applicant created a 9 lot subdivision and now they want a ten lot subdivision. There is neighbor opposition as well.

Mr. Hiltz was wondering if the property was originally intended to be a road.

Mr. Zuker wanted to know what the Board's preference would be. Ms. Coffey is not at the meeting tonight. Therefore the applicant would need to have a 4-0-0 vote. Should we get an extension from the applicant for longer, so Ms. Coffey could be present for the vote?

Mr. Hiltz felt the applicant had an alternate way to go. If the feeling is that the applicant is not going to get at least 2 positive votes then it will not matter if there was a supermajority or not.

A motion was made by Mr. Hiltz, seconded by Ms. Murphy, on behalf of the applicant, to approve a Variance from Section 6-B.1 of the Zoning Bylaw which requires frontage of 150 feet along the street line with 87.33 feet being provided.

The vote was **1-3-1**; therefore the application for a **Variance** under Section 6-B.1 is hereby **denied**. (Murphy voting in favor, Zuker, DeCelle and Hiltz voting in opposition) (Mr. Foley was not present for the August 13th hearing therefore he was not eligible to vote)

A motion was made by Mr. Hiltz, seconded by Ms. Murphy, on behalf of the applicant, to approve a **Variance** from Section 6-B.1 of the Zoning Bylaw which requires a circle, the diameter of which is not less than 80% (120 ft.) of the minimum required lot frontage, tangent to the exterior street line from which the required frontage and minimum setbacks are derived.

The vote was **1-3-1**; therefore the application for a **Variance** under Section 6-B.1 is hereby **denied**. (Murphy voting in favor, Zuker, DeCelle, Hiltz voting in opposition) (Mr. Foley was not present for the August 13th hearing therefore he was not eligible to vote)

A motion was made by Mr. Hiltz, seconded by Ms. Murphy, on behalf of the applicant, to approve a **Variance** from Section 6-C.3.A of the Zoning Bylaw which requires a variance from lot frontage along the street line and also between said lot lines along a line which marks the required building setback. The longer of said distances shall be considered frontage however, the shorter of such measurements shall be not less than 80% percent of the required frontage. The proposed frontage along the street line is 87.33 feet and the shorter at the setback line is 46 feet.

The vote was **1-3-1**; therefore the application for a **Variance** under Section 6-C.3.A is hereby **denied**. (Murphy voting in favor, Zuker, DeCelle, Hiltz voting in opposition) (Mr. Foley was not present for the August 13th hearing therefore he was not eligible to vote)

REASONS FOR DECISION:

It is the finding of the Board that the applicant has not met the requirements for a Variance under Section 2.3 of the Zoning Bylaw in that:

- 1. Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located.*

The Board finds that the applicant has not demonstrated a need relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which the property is located.

- 2. A literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner.*

The Board finds that the applicant has not shown substantial hardship, financial or otherwise. If there was hardship, it was self-imposed. The Applicant created the subdivision abutting this property which in turn created the oddly shaped lot. The applicant has other options besides obtaining a variance.

- 3. Desirable relief may be granted without substantial detriment to the public good*

The Board finds that there were many concerns by abutters relative to drainage, wetlands and intent of the lot. The Board found that granting such relief would be detrimental to the public good.

- 4. Desirable relief may be granted without nullifying or substantially derogating from the intent and purpose of this Bylaw.*

The Board finds that the property is located in a Residence A, and therefore, the Variance may not be granted without nullifying or derogating from the intent or purpose of this bylaw.

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7:00 p.m. – Evria & Evelina Gourdoukis – Case #13-14

Mr. Zuker read the public hearing notice for **EVRIA & EVELINA GOURDOUKIS – Case #13-14**, with respect to property located at 263 High Plain Street, Walpole, MA and shown on the Assessors Map 35 and Lot Nos.375 & 374, Residence B Zoning District.

The application is a Repetitive Petition and the Zoning Board of Appeals will be considering the question of whether there has been specific or material change in the conditions upon which the previous unfavorable action was based.

The application is for:

A FINDING under Section 2:5.B of the Zoning Bylaws consenting to a re-petition to the Zoning Board of Appeals for a Variance based upon specific and material changes to the reconfiguration of their property at 263 High Plain Street, Walpole , MA as shown on a plan entitled Zoning Board of Appeal, #263 High Plain Street, Plan of Land in Walpole, MA, Scale: 1"=20', March 17, 2014, Glossa Engineering, Inc., 46 East Street, East Walpole, MA 508-668-4401, within two years after the date of final unfavorable action of the Zoning Board of Appeals.

A VARIANCE from Section 6-B of the Zoning Bylaws to allow the reconfiguration of three (3) parcels of land comprised of multiple lots each (held in common ownership) into one (1) conforming lot for a single-family home, and one (1) lot for the existing single-family home which is non-conforming due to the front yard setback.

Mr. Zuker stated that there are two separate issues before the Board. The Board heard this case back in 2012 and issued a decision in 2013. Right now all we are going to do is take some testimony. The Board will first vote on the finding, before the Board can vote on the variance.

Phil Macchi, the applicant's attorney, wanted to thank the Board for making this case a one step process not a two-step process. He wanted to thank Stephanie Mercandetti for making that happen with her helpful input. Mr. Macchi asked the Board to look at Exhibit C which is the first application submitted to the town. The land was subdivided into two lots. The problem was when they divided it they actually made two non-conforming lots as opposed to one conforming lot and one non-conforming lot. They also ended up making the non-conforming lot even more non-conforming. They split the garage and the driveway in two different lots. The Board denied both of the proposals. Mr. Macchi asked the Board to draw their attention to the easel to see the proposed plan. We have changed the reconfiguration of the lot where the house was to allow for a side yard setback. We have gone from the first plan that was extremely non-conforming to what you have before you which is a significant change. There have been no prior plans that have provided this change. The Planning Board has said that there was a material change and that they are pleased.

Ms. Murphy stated that this case has never gone before the Planning Board, so why are they so pleased with the change of plans.

Mr. Zuker said for the Board's knowledge there is a letter from the Planning Board in the case folder which stated: The Planning Board's Finding of a material change merely allows the Applicant to proceed further. The Applicant's next step being to seek a Finding from the Zoning Board of a material change as well. Should both Boards make a positive Finding the Applicant would then be able to file a new application for a Variance within the two year period.

Ultimately, it will be up to the Zoning Board to determine whether or not to either grant or deny the subsequent filing of a new application for Variance.

Mr. Hiltz stated that just procedurally the request the applicant sought from the Planning Board was for consent. The request from the Zoning Board is a finding and consent.

Mr. Zuker stated that for the Planning Board the issues are zoning matters. The crux of this is for our Board to determine.

Mr. Hiltz mentioned that the Planning Board is essentially just saying that they consent to the re-filing of the new application.

Mr. Foley asked if the Board is interpreting the Planning Board's comments as consent.

Mr. Zuker asked if any of the public has anything they would like to add. He explained that as of right now the Board is talking about if there is a material change from the previous application.

Mr. Macchi stated that the people sitting in the audience are in favor of this proposed project.

Michael Murphy of 253 High Plain Street said that there will be no detrimental effect on the neighborhood if the applicant's variance is approved. He stated that he supports this project 100%.

Douglas Shea of 2 Change Street said that he is in complete favor of this project and has no concerns.

Gregory St Cyr of 280 High Plain Street said that he is here to oppose the project. If the Board is just asking comments about whether material change as occurred on the previous application then he will wait to state his comments for later.

A resident from Sybil Street stated that the applicant is a wonderful neighbor and that she has no problem with the applicant building there.

Kristin Morrison of 6 Dupee Street said that she is in complete favor of this variance. It will improve the character of the neighborhood. The neighborhood needs something there and we are all in agreement.

Mr. Zuker thanked the public for their comments. He then mentioned that he was on the Board the first time this case was heard, no matter what the applicant did one of the lots was always going to be short. We looked at every scenario.

Mr. Foley said that there have been some substantial changes from the prior plan.

Mr. Zuker said that however you sliced it the numbers never worked. You can add buffers and remove garages which are all great things. However, we have zoning bylaws. I struggled with it the first time around and I think I will struggle with it again.

Mr. DeCelle asked when the two years for the previous denial of the variance was up.

Mr. Macchi stated February 10, 2015.

Mr. Zuker said that the Board went through so many different scenarios. We continued it and continued it and then in the end we denied. I just don't see enough of a change.

Mr. DeCelle stated that he was on the board when this case originally came up and that he has the same issues he had 1 ½ years ago. He agrees with Mr. Zuker.

Mr. Foley felt that the Board was getting ahead of itself. Right now the board is just trying to see if there has been some change from the original plan.

Ms. Murphy said that she would look at it differently if the applicant had bought a slice of land from a neighbor or something.

Mr. Zuker said that the Board spent tons of time on this case and that they heard it over and over.

Ms. Murphy added hours and hours of time.

Mr. Macchi wanted to know if the Board would consider the application being held until February. He stated that the applicant would give the Board an extension until February and that they would withdraw their request for a finding. The Board could continue the variance until the end of February.

Mr. Zuker stated that he would be more than happy to do that. It would be a much better situation and the Board would waive the filing fee.

Mr. DeCelle mentioned that the variance that was in the current application was for a front yard setback.

Mr. Macchi stated that the application for the variance was supposed to be for the area.

Mr. DeCelle said that is not what the application says.

Mr. Macchi said that it will be the same plan it will be for the area and that the applicant has the frontage.

Mr. Zuker stated that the applicant would need a front yard setback.

Mr. Macchi said that the house is not changing. If the applicant was changing the house it would be non-conforming and we are not changing the house.

Mr. Zuker said that it was a gray area.

Mr. Hiltz wanted to know what the Board should ask for.

Mr. Zuker said that you are not allowed to subdivide the lot if it creates a higher degree of non-conformity.

Mr. Macchi stated that the lots conform more now than before. He stated that they would come back before the board under section 9. Nothing is happening to the house.

Mr. DeCelle said that you are making the area non-conforming.

Mr. Macchi said that the variance is to reconfigure it.

Mr. Hiltz said that the extra time gives the Board an opportunity to look at your application again.

Mr. DeCelle stated that what is before the board now is a front yard setback.

Mr. Macchi stated that they would have to agree to disagree.

Board members suggested that the applicant withdraw their application and refile the Variance in February.

Mr. Macchi, on behalf of the applicant, made the request to withdraw their application.

A motion was made by Mr. Hiltz, seconded by Ms. Murphy on behalf of the applicant to withdraw the application and refile the application again in February 2015 with a waiver of fees.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Murphy and Foley voting)

Mr. Zuker left at 8:08 p.m.

Minutes

Mr. Hiltz mentioned that the Board would have to hold off on approving the minutes for the meetings of May 8, 2014; May 21, 2014; June 25, 2014; and July 21, 2014 because both Ms. Coffey and Mr. Zuker need to be present to vote on those minutes.

A motion was made by Ms. Murphy, seconded by Mr. DeCelle to approve the May 14, 2014 meeting minutes as written.

The vote was **4-0-0 in favor**. (DeCelle, Hiltz, Murphy and Foley voting)

A motion was made by Ms. Murphy, seconded by Mr. DeCelle to approve the May 28, 2014 meeting minutes as written.

The vote was **4-0-0 in favor**. (DeCelle, Hiltz, Murphy and Foley voting)

A motion was made by Mr. DeCelle, seconded by Mr. Foley to approve the June 11, 2014 meeting minutes as written.

The vote was **2-0-1 in favor**. (DeCelle and Foley voting in favor and Hiltz abstaining)

A motion was made by Ms. Murphy, seconded by Mr. DeCelle to approve the July 16, 2014 meeting minutes as written.

The vote was **3-0-1 in favor**. (DeCelle, Hiltz, Murphy voting in favor and Foley abstaining).

It was mentioned that the Board would like to talk with the Building Inspector Jack Mee at the October 29, 2014 meeting regarding certain sections of the Zoning Bylaw that need clarification.

There being no further business, a motion was made by Ms. Murphy, seconded by Mr. DeCelle, to adjourn the meeting at 8:22 p.m.

The vote was **4-0-0 in favor**. (DeCelle, Hiltz, Foley and Murphy voting)

Craig W. Hiltz
Clerk

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Minutes were approved on December 10, 2014.